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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 Thomas Curtis,

8 Plaintiff,

9 v.

10 State of Washington Inc., et al.

11 Defendants.
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Case No. 2:20-cv-02252-RFB-BNW

ORDER

13 Pro se plaintiff Thomas Curtis filed documents initiating this case on December 11, 2020.
14 (ECF No. 1.) Plaintiff submitted the affidavit required by 28 U.S.C. § 1915(a) showing an
15 inability to prepay fees or costs or give security for them. Accordingly, the court will grant his
16 request to proceed *in forma pauperis*. The court now screens Plaintiff's complaint.

17 **I. ANALYSIS**

18 **A. Screening standard**

19 Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint
20 under 28 U.S.C. § 1915(e)(2). In screening the complaint, a court must identify cognizable claims
21 and dismiss claims that are frivolous, malicious, fail to state a claim on which relief may be
22 granted or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
23 § 1915(e)(2). Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard
24 for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668
25 F.3d 1108, 1112 (9th Cir. 2012). To survive § 1915 review, a complaint must "contain sufficient
26 factual matter, accepted as true, to state a claim to relief that is plausible on its face." *See Ashcroft*
27 *v. Iqbal*, 556 U.S. 662, 678 (2009). The court liberally construes pro se complaints and may only
28 dismiss them "if it appears beyond doubt that the plaintiff can prove no set of facts in support of

1 his claim which would entitle him to relief.” *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir.
2 2014) (quoting *Iqbal*, 556 U.S. at 678).

3 In considering whether the complaint is sufficient to state a claim, all allegations of
4 material fact are taken as true and construed in the light most favorable to the plaintiff. *Wylar*
5 *Summit P’ship v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted).
6 Although the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff
7 must provide more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S.
8 544, 555 (2007). A formulaic recitation of the elements of a cause of action is insufficient. *Id.*
9 Unless it is clear the complaint’s deficiencies could not be cured through amendment, a pro se
10 plaintiff should be given leave to amend the complaint with notice regarding the complaint’s
11 deficiencies. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

12 **B. Screening the Complaint**

13 Plaintiff alleges that in June of 2019, Ms. Rabchenko’s boyfriend was driving Ms.
14 Rabchenko’s car on Las Vegas Boulevard. He alleges Ms. Rabchenko was a passenger in the car.
15 He claims Ms. Rabchenko’s boyfriend crashed into a vehicle in which he was a passenger. He
16 alleges that Ms. Rabchenko was negligent by allowing her boyfriend to drive her car, knowing
17 that her boyfriend was (1) not insured and (2) drunk or medicated while driving. He also alleges
18 that Ms. Rabchenko failed to report the accident. Lastly, he seems to allege that Ms. Rabchenko
19 did not use her insurance company—State of Washington, Inc., Arnold and Smith Insurance—to
20 cover these claims. Instead, she used Bristol West Inc. as insurance, which constituted a
21 fraudulent act.

22 The named defendants are Tessie Rabchenko and State of Washington, Inc., Arnold and
23 Smith Insurance. Plaintiff alleges three different “claims:” (1) personal liability injury, (2) double
24 treble damages, and (3) failing to report an accident. It appears plaintiff is alleging all three
25 claims against both defendants.

26 **Claim I: Personal Liability Injury**

27 The court construes this claim as a negligence claim against Ms. Rabchenko and her
28 insurance company (which Plaintiff alleges is State of Washington, Inc., Arnold and Smith

1 Insurance). Negligence requires a plaintiff to establish (1) the defendant owed the plaintiff a duty
2 of care; (2) the defendant breached that duty; (3) the breach caused the plaintiff injury; and (4) the
3 injury resulted in damages. *Sadler v. PacifiCare of Nev., Inc.*, 340 P.3d 1264, 1267 (2014). Here,
4 Plaintiff alleges Ms. Rabchenko owed plaintiff a duty of care to ensure that her boyfriend, who
5 was uninsured, not drive a vehicle while drunk or under the influence of medications. He next
6 alleges that this duty was breached by allowing her boyfriend to drive. Plaintiff alleges that this
7 breach resulted in an accident. Lastly, Plaintiff alleges he is entitled to “pain and suffering,” but
8 does not state what injuries he sustained, physical or otherwise. Accordingly, Plaintiff pleads
9 facts sufficient to make out the first three elements of a negligence claim against Ms. Rabchenko
10 but not the fourth element.

11 As to State of Washington, Inc., Arnold and Smith Insurance, Plaintiff must plead facts to
12 support the theory under which the insurance company is a named defendant. It is not clear to the
13 court why State of Washington, Inc., Arnold and Smith Insurance would be a named defendant
14 under a negligence theory, as Plaintiff alleges that is not Ms. Rabchenko’s insurance company.

15 In addition, what is not clear from the complaint is whether Plaintiff has already been
16 compensated by an insurance company—irrespective of which one—for the damages caused by
17 this car accident. To explain, Plaintiff alleges that Ms. Robchenko used Bristol West Inc. as the
18 insurance to cover these damages and that this constituted fraud because her insurance is actually
19 State of Washington Inc., Arnold and Smith Insurance.

20 Lastly, but importantly, the Court notes that it is not clear whether subject matter
21 jurisdiction exists over this case. Plaintiff filed this case in federal court and seems to be invoking
22 diversity jurisdiction. Federal courts have original jurisdiction over all civil actions where the
23 matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs, and is between
24 citizens of different States. 18 U.S.C. § 1332. Plaintiff must clearly indicate in his next pleading
25 whether he is a resident of Nevada (it appears he is) and the residency of the defendants. In
26 addition, his prayer for relief (discussed below) must indicate whether the amount he seeks
27 exceeds \$75,000, exclusive of interest and costs.
28

1 Accordingly, the court will order Claim I dismissed without prejudice and allow Plaintiff
2 to amend the complaint.

3 **Claim 2: Double Treble Damages**

4 Plaintiff pleads double treble damages as a claim. Treble damages is not a claim but a
5 form of relief that Plaintiff is seeking. As a result, Plaintiff may not state a claim for double treble
6 damages but may add it as a request for relief at the end of a future pleading (assuming he has a
7 valid basis for seeking this relief). . The court notes that Plaintiff cites to Nev. Rev. Stat. § 42.005
8 as the statute allowing him to seek treble damages. However, Plaintiff is advised that no provision
9 of the statute allows Plaintiff to seek “double” treble damages.

10 **Claim 3: Failing to Report an Accident**

11 As for this claim, Plaintiff alleges that Ms. Rabchenko used “a false insurance policy”—
12 Bristol West Inc., when the insurance she should have been using is State of Washington Inc.
13 Arnold and Smith Insurance. It is unclear to the court what Plaintiff’s theory of liability is for this
14 claim. In other words, the court does not know what claim Plaintiff is trying to bring. Thus, the
15 court cannot evaluate whether Plaintiff pled sufficient facts to state a claim. Accordingly, the
16 court will dismiss this claim without prejudice and with leave to amend.

17 If Plaintiff files an amended complaint, he must clarify the legal basis of his claim. To the
18 extent he is alleging fraud, he must plead facts sufficient to show “(1) [a] false representation
19 made by the defendant; (2) defendant’s knowledge or belief that its representation was false or
20 that defendant has an insufficient basis of information for making the representation; (3)
21 defendant intended to induce plaintiff to act or refrain from acting upon the misrepresentation;
22 and (4) damage to the plaintiff as a result of relying on the misrepresentation.” *Barmettler v. Reno*
23 *Air, Inc.*, 114 Nev. 441, 447 (1998). He must also establish facts that support each of these
24 elements as to each defendant he sues for fraud.

25 **C. Instructions for Amendment**

26 Plaintiff is also advised that if he chooses to file an amended complaint, the original
27 complaint no longer serves any function in this case. As such, if he files an amended complaint,
28 each claim and the involvement of each defendant must be alleged sufficiently. The court cannot

1 refer to a prior pleading or to other documents to make his amended complaint complete. The
2 amended complaint must be complete in and of itself without reference to prior pleadings or to
3 other documents.


4 **II. CONCLUSION**

5 **IT IS THEREFORE ORDERED** that Plaintiff's motion to proceed *in forma pauperis*
6 (ECF No. 1) is GRANTED.

7 **IT IS FURTHER ORDERED** that the clerk of court must detach and separately file
8 Plaintiff's complaint (ECF No. 1-1).

9 **IT IS FURTHER ORDERED** that Plaintiff's complaint be dismissed with leave to
10 amend. If Plaintiff wishes to amend the complaint, he must do so by February 26, 2021.

11 DATED: January 20, 2021.

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13 BREND A WEKSLER
14 UNITED STATES MAGISTRATE JUDGE
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